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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,706	10/30/2001	Mark D. Seaman	10008306-1	2769
22879 7590 08/09/2010 HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528				
EXAMINER ROSARIO, DENNIS				
ART UNIT 2624		PAPER NUMBER		
NOTIFICATION DATE 08/09/2010		DELIVERY MODE ELECTRONIC		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK D. SEAMAN, GREGORY A. BRAKE,
and ROBERT D. THOMPSON

Appeal 2009-002803
Application 10/002,706¹
Technology Center 2600

Before MARC S. HOFF, CARLA M. KRIVAK,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL²

¹ The real party in interest is Hewlett-Packard Company.

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 4, 5, 7-18, and 27. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellants' invention relates to an image capture device and a method for automatically generating image meta-data from digital images using at least one predefined image analysis algorithm. The image meta-data and the image data are combined in one file which enables a user to search digital images based upon content of the image. (Abstract; Spec. 8:20-9:12).

Claim 4 is exemplary:

4. An image file embodied in a computer-readable medium, comprising:
digital image data that represents an image; and
image meta-data associated with the digital image data created by applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Li	US 5,734,893	Mar. 31, 1998
Wang	US 6,035,055	Mar. 7, 2000
Fuller	US 6,877,134 B1	Apr. 5, 2005

Claims 4, 5, 7-18, and 27 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply the enablement requirement.³

Claims 4 and 5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Wang.

³ Appellants incorrectly recite the grounds for rejection under 35 U.S.C. § 112, second paragraph (App. Br. 6; see Ans. 3).

Claims 4, 7-15, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fuller.

Claims 16-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fuller in view of Wang and Li.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Appeal Brief (filed February 14, 2008), the Reply Brief (filed June 10, 2008), and the Examiner's Answer (mailed April 15, 2008) for their respective details.

ISSUES

Appellants contend that since the Specification recites that the *"predefined image analysis algorithms 216 may be configured to identify location recognition information."* the Specification complies with the enablement requirement by supporting the claim limitation at issue: "applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured" (App. Br. 8).

Regarding the anticipation rejection, Appellants contend that Wang does not teach each and every feature of the claims (App. Br. 9). Appellants contend further that the Examiner erred in declining to consider and account for every limitation (App. Br. 9). Appellants argue that the Examiner's interpretation of the claim limitation "recognized location at which the image was captured" as the location of the face with respect to the body contradicts the plain and ordinary meaning of "location" and is unreasonable (Reply Br. 6).

Appellants' contentions present us with the following two issues:

1. Does the claim limitation requiring "applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured" fail to comply with the enablement requirement in violation of the first paragraph of 35 U.S.C § 112?

2. Do the references disclose "applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured"?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

The Invention

1. According to Appellants, the invention relates to an image capture device and a method for automatically generating image meta-data from digital images using at least one predefined image analysis algorithm. The image meta-data and the image data are combined in one file which enables a user to search digital images based upon content of the image. (Abstract; Spec. 8:20-9:12).

2. Image analysis algorithms 216 may be employed to identify content-based meta-data for face recognition, scene recognition, location recognition, and voice recognition (Spec. 11:1-4). Specifically, "predefined image analysis algorithms 216 may be configured to identify location recognition information," that is, identify where the image was captured (Spec. 11:5-6, 12).

3. Other types of information about image data can be manually input by the user without needing to be extracted by a predefined image analysis algorithm, including the name of person using the image capture device, date, time, and location of where the image was captured (Spec. 11:7-14).

Wang

4. Wang discloses an image management system 100 that automatically extracts content based meta-data from digital images using a content analyzer 102. The content data maybe include color data, texture data, face feature data, shape, and position data of objects within the image and other feature data of the image. (Col. 3, ll. 51-58).

5. Wang discloses that the face detection system 201 detects the eye locations of a face if the image contains a face. (Figs. 4 and 5; col. 9, ll. 29-31).

PRINCIPLES OF LAW

Enablement

Pursuant to 35 U.S.C. § 112, first paragraph, “[t]he test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation.” *United States v. Teletronics, Inc.*, 857 F.2d 778, 785 (Fed. Cir. 1988).

Anticipation

Anticipation pursuant to 35 U.S.C § 102 is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v.*

IRECO Inc., 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

Obviousness

On the issue of obviousness, the Supreme Court has stated that “the obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). Further, the Court stated “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416.

ANALYSIS

Rejection of claims 4, 5, 7-18, and 27 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement

Independent claims 4 and 16 recite “applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured.” Independent claims 7 and 13 recite a similar claim limitation.

The Examiner finds the recitation in the Specification that designates that another type of meta-data may be acquired “which need not be extracted by a predefined image analysis algorithm 216” includes “information about the location where image 110 was captured” (Ans. 4; FF 3). The Examiner finds that this recitation corresponds to the claim limitation at issue (Ans. 4). However, if the meta-data corresponding to “information about the location” is not extracted by the predefined image analysis, but is instead manually entered by the user, then the claim limitation contradicts the disclosure, and the disclosure does not enable one of ordinary skill in the art to make and use the claimed invention (Ans. 4).

We agree with Appellants that the Specification does provide adequate disclosure to support the claim limitation. Specifically, the Specification discloses that there are two categories of meta-data: (1) that which is extracted using a predefined image analysis algorithm (FF 2), and (2) that which may be manually entered (FF 3). More particularly, the Specification discloses that “*predefined image analysis algorithm 216* may be configured to identify *location recognition* information” (FF 2 (emphasis added)). We find that this recitation provides adequate support for the claim limitation at issue.

Therefore, because Appellants’ arguments have persuaded us of error in the Examiner’s rejection of claims 4, 5, 7-18, and 27 under 35 U.S.C. § 112, first paragraph, we reverse the Examiner’s rejection.

*Rejection of claims 4 and 5 under 35 U.S.C.
§ 102(b) as being anticipated by Wang*

Independent claim 4 recites “applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured.”

Although the Examiner did respond to Appellants’ contention that it is the duty of the Examiner to consider and account for every limitation, we agree with Appellants that Wang does not disclose each and every feature of the claim (App. Br. 9). The Examiner finds that the disclosure in Wang corresponding to face recognition is representative of the “recognized location” claim limitation, wherein the content analyzer detects the location of the eyes within the face or the location of the face on the body (Ans. 13 and 16; FF 5). We agree with Appellants, however, that although Wang discloses an image management system that automatically identifies content

based meta-data from digital images like face recognition information, Wang is silent as to an image analysis algorithm that identifies a recognized location, wherein the location is geographical, i.e., where the image was captured, rather than the position of objects within an image such as the location of eyes on a person's face (App. Br. 9; FF 4).

We therefore find that Wang does not teach all the limitations of representative claim 4. Thus, we find error in the Examiner's rejection of claim 4, and claim 5 that depends therefrom, under 35 U.S.C. § 102(b) as anticipated by Wang, and we will not sustain the rejection.

Rejection of claims 4, 5, 7-15, and 27 under 35 U.S.C.

§ 103(a) as being unpatentable over Fuller in view of Wang

Independent claim 4 recites "applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured."

Appellants argue that claim 4 is patentable over the cited prior art because Fuller does not cure the deficiencies asserted with respect to the Wang reference (App. Br. 11).

As noted *supra*, we reversed the rejection of independent claim 4 from which claim 5 depends. Independent claims 7 and 13 have similar claim limitations to that of independent claim 4. We have reviewed Fuller and find that it does not teach the claim limitation deemed to be absent from Wang.

We therefore reverse the Examiner's rejections of claims 4, 5, 7-15, and 27 under 35 U.S.C. § 103, for the same reasons expressed with respect to the rejection of independent claim 4, *supra*.

*Rejection of claims 16-18 under 35 U.S.C. § 103(a) as
being unpatentable over Fuller in view of Wang and Li*

Similar to independent claim 4, independent claim 16 recites “applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured.”

As noted *supra*, we reversed the rejection of independent claim 4. We have reviewed Fuller and Li, and find that none of the cited references teaches the limitations deemed to be absent from Wang.

We therefore reverse the Examiner’s rejections of claims 16-18 under 35 U.S.C. § 103, for the same reasons expressed with respect to the rejection of independent claim 4, *supra*.

CONCLUSIONS

The claim limitation “applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured” complies with the enablement requirement of the first paragraph of 35 U.S.C § 112.

None of the cited references disclose “applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured” as claimed.

ORDER

The Examiner’s rejection of claims 4, 5, 7-18 and 27 is reversed.

Appeal 2009-002803
Application 10/002,706

REVERSED

ELD

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